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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 550

CHEMICAL BANK NEW YORK TRUST COMPANY AND MANUFACTURERS HANOVER TRUST COMPANY, FORMERLY MANUFACTURERS TRUST COMPANY, PETITIONERS

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 161; Pet. App. B–1) is reported at 199 F. Supp. 256.[1] The opinion of the Court of Appeals for the District of Columbia Circuit (Pet. App. B–11) is reported at 319 F. 2d 720.

[1] "R." references are to the Joint Appendix in the Court of Appeals, filed as part of the record in this Court. "Pet. App." references are to the Appendix to the Petition For a Writ of Certiorari.

JURISDICTION

The judgment of the Court of Appeals was filed on May 2, 1963, (Pet. App. B–14). A timely petition for rehearing was denied on July 16, 1963. The petition for certiorari was filed on October 14, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in light of the provisions of section 208(a) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1631g(a), prohibiting the allowance by the Attorney General of debt claims asserted against an agency of the Hungarian Government, the Court of Appeals erred in directing that the case be remanded for a finding by the Attorney General as to whether the instant claims were in fact asserted against an agency of the Hungarian Government.

STATUTES INVOLVED

The pertinent provisions of the International Claims Settlement Act of 1949, as amended, 64 Stat. 12, 69 Stat. 562, *et seq.*, 22 U.S.C. 1621, *et seq.*, are set forth in the Appendix, *infra*, pp. 13–15.

STATEMENT

Certain property of the National Bank of Hungary was vested by the Attorney General on May 28, 1956, pursuant to section 202 of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1631a (R. 53–67). Subsequently, the New York Trust Company (now the Chemical Bank New York Trust Company) and the Manufacturers Trust Company (now the Manufacturers Hanover Trust Company)

filed with the Office of Alien Property of the Department of Justice notices of debt claims in the respective sums of $684,142.98 and $159,833.04 (R. 68–85). Both claims, filed under section 208 of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1631g, were asserted against the National Bank of Hungary and payment was sought from the vested property of that bank (R. 68–85). The net amount in the bank's vested account available for the payment of debt claims is $168,158.07 (R. 157). The facts underlying these claims can be summarized as follows:

The petitioners' claims were based on unpaid balances on loans made under an agreement of December 19, 1928 (hereinafter called the Hungarian Export Agreement) which provided for a self-liquidating, revolving $5,000,000 export credit to be furnished by petitioners to enable Hungarian exporters to obtain payment in dollars for products exported from Hungary. Eight Hungarian banks guaranteed the due payment at maturity of any and all drafts drawn by their customers against this fund and accepted by New York Trust Company (R: 16–20). By a concurrent agreement the Royal Hungarian Government also guaranteed that the Hungarian firms taking the credits would remit to the credit of the special account of the Hungarian banks with the New York Trust Company amounts sufficient for the payment of their obligations on the basis of bills accepted and discounted by the New York Trust Company, and that, should such firms fail to do so, the Hun-

garian Government would remit the necessary amounts (R. 20–26).

The provisions of the Hungarian Export Agreement were duly carried out without significant incident until early August 1931. At that time the Hungarian Government enacted moratorium laws which provided that payments of foreign currency outside of Hungary required permission of the National Bank of Hungary, a bank partly owned by the Hungarian Government and designated by it as its national administrator of foriegn exchange (R. 96). On August 14, 1931, counsel for the Hungarian Commercial Bank of Pest, the syndicate manager for the eight Hungarian banks that guaranteed the Hungarian export credit, wrote to the National Bank of Hungary, requesting a written statement that the moratorium decrees would not prevent the continuance of business under the Hungarian export agreement (R. 32–33).

In response, on August 25, 1931, the National Bank of Hungary wrote to the Hungarian Commercial Bank of Pest and gave its consent that the counter value in foreign exchange of bills discounted within the $5,000,000 export credit granted by the New York Trust Company could be claimed by the exporters from the National Bank of Hungary at the time these bills fell due (R. 35–36).

However, shortly before January 15, 1932, apparently as a result of further moratorium laws, the Hungarian Minister of Finance advised the New York Trust Company that payments in foreign currencies were prohibited and that the commitment commission due the New York Trust Company on

January 15, 1932, would not be paid. On January 15th, the New York Trust Company cabled both the Hungarian Commercial Bank of Pest and the Hungarian Minister of Finance, and notified them that payment was not received, that the Hungarian Export Agreement of 1928 was thus in default, and that the Trust Company's obligations thereunder had terminated (R. 36). Following these cablegrams, the National Bank of Hungary, on January 20, 1932, informed the Hungarian Commercial Bank of Pest by letter that the National Bank's letter of August 25, 1931, would have to be considered null and void (R. 37). Although various expedients were undertaken in the ensuing years to reduce the amount of the unpaid debt (R. 38–48), at the time the subject claims were filed with the Office of Alien Property $684,142.98 was still due to the New York Trust Company and the other banks it represented (R. 69) and $159,883.04 remained due to the Manufacturers Trust Company (R. 80).

Based upon the above-described events during the period 1928–1932, the petitioners filed claims under the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1621, *et seq.*, *infra*, pp. 13–15, with two different governmental agencies. Pursuant to section 303 of the Act, 22 U.S.C. 1641b, *infra*, p. 14, they filed claims against the Government of Hungary with the Foreign Claims Settlement Commission, and these claims were allowed by the Commission (R. 85; Petitioners' brief in the Court of Appeals, pp. 16–17). These claims were specifically

grounded upon the Hungarian Government's breach of its 1928 guaranty of the Hungarian Export Agreement (*ibid.*). In addition, petitioners filed the instant claims against the National Bank of Hungary with the Office of Alien Property (R. 68–85). These claims against the bank were grounded upon the assertion that the August 25, 1931, letter from the National Bank, giving its consent for operations under the Hungarian Export Agreement to continue, gave rise to a contractual obligation from the National Bank to the New York Trust Company (R. 70, 75–78, 80, 84–85).

On December 22, 1960, the Attorney General ordered that these claims be dismissed because there was no debt due and owing to petitioners by the National Bank of Hungary (R. 151–155). Thereupon, pursuant to section 208(b) of the International Claims Settlement Act, 22 U.S.C. 1631g(b), petitioners instituted this action for review in the District Court (R. 3).

The District Court held that the August 25, 1931, letter from the National Bank of Hungary gave rise to a contract between the National Bank and the New York Trust Company which the bank breached and ordered petitioners' claims paid. (R. 161–170; Pet. App. B1–10). The Court of Appeals reversed. Pointing to section 208(a) of the Act, 22 U.S.C. 1631g(a), which provides that the Attorney General shall not allow a claim if it is asserted against an agency of the Hungarian Government and noting that the Attorney General had failed to pass upon the question, the court ordered that the case

be remanded to the Attorney General for a determination as to whether the petitioners' claims against the National Bank of Hungary were claims against an agency of the Hungarian Government and thus barred by the statute (Pet. App. B11-13).

ARGUMENT

The decision of the court below is correct and concerns a matter of no continuing importance. Further review of that decision by this Court is therefore unwarranted.

1. (a) Section 208(a) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1631g(a), *infra*, p. 13, provides that: "No debt claim shall be allowed under this section—(1) if it is asserted against * * * Hungary * * * (including the government or any political subdivisions, agencies, or instrumentalities thereof) * * *." Section 208(c), 22 U.S.C. 1631g(c), *infra*, p. 14, provides that the Attorney General "shall make a determination, with respect to each claim, of allowance or disallowance" and that his "determination * * * that a claim is within * * * paragraph (1) * * * of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section." Thus, as the court of appeals held, the statute contemplates that no claim should be granted unless the Attorney General has first determined that the claim is not being asserted against a governmental agency. This is at the heart of the statutory scheme under which claims of Americans against foreign

governments or governmental agencies are not to be considered by the Office of Alien Property. Instead, such claims are to be considered by the Foreign Claims Settlement Commission. The Office of Alien Property is concerned solely with claims against private persons and organizations. See sections 208(a), 302, and 303 of the Act, 22 U.S.C. 1631g(a), 1641a, and 1641b, *infra*, pp. 13–15.

In the present case, the pleadings and documents submitted by petitioners were replete with evidence that the National Bank of Hungary, in issuing its letter of August 25, 1931 (on which petitioners rely for their contractual claim), was acting in the capacity of a governmental agency. In these circumstances, the Court of Appeals was fully warranted in ordering that the case be remanded for the Attorney General to determine whether petitioners' claims were being asserted against an agency of the Government of Hungary.

Every circumstance of this case indicates that the National Bank was acting as a governmental agency. Petitioners' claims were said in their complaint to be based upon "the August 25, 1931 exemption from the Moratorium Laws of Hungary" granted by the National Bank of Hungary (R. 4). It would seem that an exemption from governmental decrees could only be granted by an organization acting as a governmental agency. In both the objections filed by petitioners at the administrative level to the proposed dismissal of their claims and in their district court complaint, the National Bank of Hungary is described

as "owned in part by the Hungarian Government and being its agent for the administration of foreign exchange" (R. 6, 96). Correspondence from the New York Trust Company during 1932 described the National Bank of Hungary as the "national administrator of the foreign exchange" (R. 46). An agreement of September 9, 1933, referred to the role of "the National Bank of Hungary in its capacity as Central Authority of foreign exchange administration" (R. 52). The New York Trust Company's Notice of Claim filed with the Office of Alien Property stated that the National Bank "was and is an instrument of the Government of Hungary" (R. 78).[2]

In addition, petitioners' very claim against the National Bank of Hungary was inseparable from the claims against the Hungarian Government which they had successfully asserted before the Foreign Claims Settlement Commission, the proper agency for hearing claims against governmental bodies. See Statement, *supra*, pp. 3–5.

(b) There is no merit to petitioners' remaining grounds of attack upon the decision of the Court of

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[2] Some other statements by the petitioners to the Office of Alien Property showing the capacity in which the National Bank of Hungary acted, are found in the record on the following pages: R. 104 (stating that the Bank was "an instrumentality of the Hungarian Government"); R. 105 (describing the Bank as the "Agent" of the Government); R. 116 (describing the National Bank of Hungary as the "administrator" of the Moratorium Laws); R. 117 (pointing out that the Hungarian Government "ordered National Bank of Hungary, its instrumentality, to grant the exemption"); R. 123; R. 133–134; R. 136; R. 149; R. 150.

Appeals. It is urged that the Court of Appeals should not have considered the Attorney General's contention, raised for the first time in the Court of Appeals, that petitioners' claims were barred by section 208(a) of the Act. Reliance is placed upon the recent opinion in *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156, 168–169, where this Court pointed out that an agency's discretionary order should be upheld only on grounds articulated by the agency. The short answer is that the Court of Appeals did not uphold the administrative determination on a ground not considered by the agency. Instead, the case was remanded to the agency with directions to consider whether petitioners' claims fell within a statutory limitation upon the agency's own jurisdiction. As pointed out above, under section 208(a) the Office of Alien property has no authority to allow a claim asserted against an instrumentality or agency of the Hungarian Government.

(c) It is also argued that the remand deprives petitioners of due process because it "permits a biased and prejudiced review of the Attorney General's disallowance of the claims, for it is a foregone conclusion in light of the history of this dispute that he will now make an unreviewable determination that Petitioners' claims are against an agency of Hungary" (Pet. 13). To be sure, the Attorney General did take the position in the Court of Appeals that the *instant record* shows the claims to be asserted against an agency of the Hungarian Government. In light

of this record, such a conclusion is virtually inescapable. It is true that if the petitioners fail to amplify the record upon remand, the Attorney General will presumably determine that their claims are asserted against a governmental agency. On the other hand, petitioners may submit to the Office of Alien Property any further evidence which they may have bearing upon the capacity of the National Bank of Hungary and tending to show a contractual obligation owed by the National Bank to the New York Trust Company which is not barred by section 208(a) of the Act. Any evidence or arguments submitted by petitioners will be fully and fairly considered by the Attorney General in making the determination which, under the statute, he is required to make.

2. The issues raised by the petitioners with respect to section 208 of the International Claims Settlement Act as amended, 22 U.S.C. 1631g, *infra*, pp. 13–14, relating to Rumanian, Bulgarian and Hungarian Claims, have no continuing importance. Other than the petitioners' claims, there are now no section 208 claims pending before the Office of Alien Property. Under section 208(b) of the Act, 1631g(b), *infra*, p. 13, the Attorney General is authorized to fix the dates in respect to which the filing of particular debt claims under the section shall be barred. By a series of "Bar Orders," which have been published in the Federal Register, the filing of any future claims against vested property under section 208(b) has been barred. See, 21 F.R. 10183; 22 F.R. 88; 22 F.R. 2512;

22 F.R. 7802; 23 F.R. 489; 23 F.R. 5531; 24 F.R. 399; 24 F.R. 5661; 25 F.R. 253; 25 F.R. 8384; 26 F.R. 8259.[3]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1963.

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[3] The only way in which any future litigation under section 208 could arise would be if further Rumanian, Bulgarian or Hungarian property were to be vested under the Act. It is our understanding that any further vesting of Rumanian, Bulgarian or Hungarian property which would come under this section is extremely unlikely.

APPENDIX

The pertinent provisions of the International Claims Settlement Act of 1949, as amended, 64 Stat. 12, 69 Stat. 562, *et seq.*, 22 U.S.C. 1621, *et seq.*, are as follows:

SEC. 208 [22 U.S.C. 1631g].

(a) Any property vested in the designee of the President pursuant to section 202(a), or the net proceeds thereof, shall be equitably applied by such designee in accordance with this section to the payment of debts owed by the person who owned such property immediately prior to its vesting in such designee. No debt claim shall be allowed under this section—

(1) if it is asserted against Bulgaria, Hungary, or Rumania (including the government or any political subdivisions, agencies, or instrumentalities thereof); or

(2) if it is based upon an obligation expressed or payable in any currency other than the currency of the United States; or

(3) if it was not due and owing—

* * * * *

(b) The designee of the President under this title shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of one year from the date of the last vesting in the designee of the

President of any property of a debtor in respect to whose debts the date is fixed. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or proceeds in respect of which a suit or proceeding for return pursuant to this title is pending.

(c) The designee shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part. The determination of the designee that a claim is within either paragraph (1) or (2) of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section.

* * * * *

SEC. 303 [22 U.S.C. 1641b]. The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them arising out of the failure to—

(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania. Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other

taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania; and

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947.

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